

1 THE HONORABLE RICARDO S. MARTINEZ
2
3
4

2 ~~FILED
LODGED~~ ~~ENTERED
RECEIVED~~
3
4

5 SEP 21 2012 JS
6

7 BY CLERK U.S. DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON DEPUTY
9

10 ORIGINAL
11
12
13
14
15

16 UNITED STATES DISTRICT COURT
17 WESTERN DISTRICT OF WASHINGTON
18 AT SEATTLE
19
20

21 UNDER SEAL,
22

23 Plaintiff,
24 v.

25 No. C11-2129-RSM
26

27 UNDER SEAL,
28

29 Defendants.

30 FILED UNDER SEAL
31

32 Note on Motion Calendar for:
33 September 21, 2012
34
35



36 11-CV-02129-RCPT
37
38

1 THE HONORABLE RICARDO S. MARTINEZ
2
3
4
5
6
7
8

9 ORIGINAL
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, ex rel.
CHARLES E. PLUNKETT,

Plaintiff,
v.

UNITED HEALTHCARE OF WASHINGTON,
INC., et al.,

Defendants.

No. C11-2129-RSM

FILED UNDER SEAL

Note on Motion Calendar for:
September 21, 2012

**UNITED STATES' NOTICE OF ELECTION
TO DECLINE INTERVENTION AND MOTION TO LIFT THE SEAL**

Pursuant to the False Claims Act, as amended, 31 U.S.C. § 3730(b)(4)(B), the United States of America hereby notifies the Court of its decision not to intervene in this action at this time.

Although the United States declines to intervene, the government respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows the Relator to maintain the action in the name of the United States; providing, however, that the "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." *Id.* Notwithstanding this statutory language, the Ninth Circuit has concluded that the United States has the right only to a hearing when it objects to a settlement or dismissal of the action.

UNITED STATES' NOTICE OF ELECTION TO
DECLINE INTERVENTION AND MOTION TO
LIFT THE SEAL - 1
(C11-2129-RSM)
FILED UNDER SEAL

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

1 *United States ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995); *United States*
2 *ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994). Accordingly, the
3 United States requests that should either the Relator or the defendants propose that this action
4 be dismissed, settled, or otherwise discontinued, this Court provide the United States with
5 notice and an opportunity to be heard before ruling or granting its approval.

6 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all
7 pleadings filed in this action be served upon the United States and that orders issued by the
8 Court be sent to the government's counsel. The United States reserves its right to order any
9 deposition transcripts, to intervene in this action, for good cause, at a later date, and to seek the
10 dismissal of the Relator's action or claim under 31 U.S.C. § 3730(e)(4). The United States also
11 requests that it be served with all Notices of Appeal.

12 Finally, the government requests that the Relator's Complaint, this Notice, and the
13 attached proposed Order be unsealed. The United States requests that all other papers on file in
14 this action remain under seal because, in discussing the status and extent of the United States'
15 investigation, such papers are provided by law to the Court for the sole purpose of evaluating
16 whether the seal and time for making an election to intervene should be extended.

17 //

18 //

19

20

21

22

23

24

25

26

27

28

UNITED STATES' NOTICE OF ELECTION TO
DECLINE INTERVENTION AND MOTION TO
LIFT THE SEAL - 2
(C11-2129-RSM)
FILED UNDER SEAL

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101-1271
(206) 533-7970

1 A proposed order accompanies this notice.
2
3

DATED this 21st day of September, 2012.

4 Respectfully submitted,
5
6

JENNY A. DURKAN
United States Attorney
Western District of Washington



7 DAVID R. EAST
8 Assistant United States Attorney
9 United States Attorney's Office
10 700 Stewart Street, Suite 5220
11 Seattle, Washington 98101-1271
12 Phone: (206) 553-7970
13 Fax: (206) 553-4073
14 E-mail: David.East@usdoj.gov

15
16
17
18
19
20
21
22
23
24
25
26
27
28
UNITED STATES' NOTICE OF ELECTION TO
DECLINE INTERVENTION AND MOTION TO
LIFT THE SEAL - 3
(C11-2129-RSM)
FILED UNDER SEAL

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the office of the United States Attorney for the Western District of Washington and is a person of such age and discretion as to be competent to serve papers;

That on September 21, 2012, she filed under seal the United States' Notice of Election to Decline Intervention and Motion to Lift the Seal and [proposed] Order and served copies of such on the person(s) hereinafter named by depositing said copies in the United States mail, postage prepaid, addressed as follows:

Adam G. Snyder
OGDEN MURPHY WALLACE P.L.L.C.
601 Fifth Avenue, Suite 2100
Seattle, Washington 98101

Attorney for Plaintiff/Relator Charles E. Plunkett

DATED this 21st day of September, 2012.

Patricia M. Buyce
Paralegal Specialist
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1270
Phone: (206) 553-7970
Fax: (206) 553-4073
E-mail: pat.buyce@usdoj.gov

**UNITED STATES' NOTICE OF ELECTION TO
DECLINE INTERVENTION AND MOTION TO
LIFT THE SEAL - 4
(C11-2129-RSM)
FILED UNDER SEAL**

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101-1271
(206) 533-7970